



# Appeals Procedures

## *Sales and Use Taxes and Special Taxes*

If you disagree with a Board of Equalization ("Board") decision regarding your liability for taxes or fees, you can usually contest that decision by filing an appeal. While the majority of appeals are resolved after discussion with Board staff, some may proceed through a succession of steps to a hearing before the elected Members of the Board. This publication contains general information about appeals procedures for sales and use taxes and Board-administered "special taxes" (fuel taxes, excise taxes, and environmental fees — see full list on page 14). For information regarding appeals of Board property tax decisions, please contact the Board's Property Taxes Department. Phone numbers for Board offices are found on pages 14 and 15.

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### Points To Remember

Although this publication discusses appeals procedures as a relatively straight succession of steps, please note that:

- You may file an appeal at any time within the time limits allowed by law. You do not lose this right even if you initially agree with a Board decision and pay taxes or fees due or receive a refund.
- In some cases, an appeal can be referred back to a prior step. As a result, you may go through some of the steps in the appeals process more than once.
- You may seek settlement of certain appeals (see "Proposing a Settlement of a Disputed Tax or Fee Liability," beginning on page 10). Generally, your appeal will continue through the normal process while the settlement is pending.

If you do appeal, you should:

- Carefully read all notices and letters sent by the Board. *Failure to respond within stated time limits can result in the denial of your appeal.* If a filing deadline occurs on a Saturday, Sunday, or State holiday, it is extended to the next business day. The Board considers the postmark on documents you mail when determining whether you have met a required deadline. All time periods described in this pamphlet are *calendar*, not business, days.
- Consider paying your tax or fee liability and filing a claim for refund of the disputed amount (see "A Note About Interest," next page). The Board does not presume that payment indicates your agreement with a determination of taxes or fees due.

### Make Sure You Have Complete and Current Information

Please note that there may be minor differences in sales and use tax appeals procedures and those applicable to special tax programs. In addition, other state agencies may be involved in the appeals process for those programs. If you wish to file an appeal and you have procedural questions, you should call the Board department or division that administers the specific tax or fee rather than rely solely on this publication (see phone numbers on pages 14-15). You may also wish to order a copy of the applicable law and/or regulations, or to obtain one of the Board publications

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State Controller, Sacramento

## APPEALING A DETERMINATION OF TAXES OR FEES DUE

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determination.*

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that applies to your specific tax or fee (see page 13 for ordering information).

As with all laws and regulations, those governing appeals are subject to change. The procedures explained in this publication are current as of its cover date. To ensure that you have the most current information, please contact the Board office responsible for your tax or fee account. If there is a conflict between information in this pamphlet and the law or regulations, any decisions will be based on the controlling law and regulations.

### ***A Note About Interest***

While an appeal is pending, interest accrues on amounts due. To stop the accrual of interest while your appeal is under consideration, you may wish to pay all or part of the taxes or fees due.

As you consider whether to pay in advance, you should keep in mind that the interest rate the Board pays on refunds is significantly lower than the interest rate you must pay on amounts you owe the Board.

For example, in January 1999 the interest rate charged on unpaid taxes or fees was 11 percent per year, while the amount the Board paid on refunds was 5 percent per year. Interest rates may change every six months.

If the Board finds that you have made an overpayment as a result of a Board determination, it will pay interest on amounts refunded to you. However, the Board may *not* pay interest on excess amounts paid with a tax or fee return if it determines that the overpayment was intentional or careless.

Please refer to the law and regulations for the specific instructions and interest calculation methods that apply to your situation. You should consult with your legal or tax advisor and with the Board to determine which course of action is right for you.

Taxpayers most often file appeals as the result of a Board audit. If the audit finds that you have underpaid taxes or fees (or if the Board otherwise determines you owe additional amounts), you will be sent a billing, called a *Notice of Determination* ("determination") or a *Notice of Jeopardy Determination*. It will state the amount of tax, interest, and penalty due. If you do not agree with the amounts shown, you may appeal by filing a *petition for redetermination* (see next section), or you may pay the amount due and file a claim for refund (see page 7).

For more information about the audit process, you may wish to obtain a copy of Board publication 76, *Audits* (see page 13 for ordering information).

### **Petition for Redetermination**

#### ***Filing Deadline***

You may contest all or part of the amount due as shown in the determination. Generally you will have 30 days from the mailing date of your *Notice of Determination* to file a petition for redetermination ("petition"). The mailing date and the issue date on the determination will usually be the same. ***Your petition will generally be denied if submitted after the filing deadline.*** (For information on responding to a *Notice of Jeopardy Determination*, see page 10.)

If you miss the filing deadline, you may continue your appeal by paying the liability and filing a claim for refund (see "Filing a Claim for Refund," beginning on page 7).

#### ***Content***

Your petition, which can be in a form as simple as a letter, must

- Be in writing
- Identify the amounts you wish to contest, and

- State the specific grounds or reasons why you believe you do not owe the tax or fee

The petition should include your tax or fee program account number. You or your representative must sign it.

**Hearing request.** If you would like to have a hearing before the Members of the Board, you should include a request for a hearing in your petition. You should also indicate whether you would like to have an appeals conference to review your case (see “The Appeals Conference,” next column). While most petitions are resolved without an appeals conference or a subsequent Board hearing, requesting a conference and a hearing at this point in the process helps preserve your appeal rights.

Mail your petition to the appropriate address:

*Petitions for sales and use taxes*

Petitions Section, MIC:38  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0038

*Petitions for taxes and fees administered under the Special Taxes Department*

See page 15 for the appropriate address.

### ***Presenting Additional Records or Documents***

After receiving your petition, Board staff will send you a letter confirming its receipt, and may ask you to provide evidence to support your position. They may also contact you later to examine additional information. You are entitled to amend your petition at any time prior to the date the Board makes a final decision on the matter.

### ***Payment While Petition is Pending***

Since filing your petition will not prevent the accrual of interest, you should consider promptly paying any undisputed portions of your tax or fee liability in order to stop

the accrual of interest on those amounts (please see “A Note About Interest,” previous page).

## **The Appeals Conference**

As mentioned earlier, most petitions for redetermination are resolved without the need for an appeals conference. However, if your dispute cannot be resolved by discussion with Board program staff, you may request that the petition proceed to an appeals conference. The conference will be held by an appeals attorney or an appeals auditor who has had no prior involvement with your case.

The Board’s Petitions Section will notify you if your case is referred to the Appeals Section for a conference. At that time, you will be asked to provide updated address information and the name and address of your representative, if you have one.

You will also be asked to indicate your preference for the location of the appeals conference. Unless you have another preference, the conference will be held in the Board District Office that prepared your audit, or in the case of audits by Special Taxes divisions, at the District Office closest to your place of business.

### ***Conference Scheduling and Notification***

The Board Proceedings Division will send you a *Notice of Conference* and a *Response to Notice of Conference* form, letting you know the date, time, and location set for the appeals conference and requesting that you respond within 5 days of receipt of the *Notice*. If you have not yet submitted your arguments and supporting evidence and wish to do so, you should immediately submit them with your *Response*.

If you no longer wish to appear at a conference, please indicate on your *Response* form that you will waive your appearance and request that the information you have

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already submitted serve as the basis for deciding your appeal. Waiving your appeals conference does not affect your right to have a hearing before the Members of the Board.

Due to the large number of cases, it may be some time before your appeals conference can be held. However, you may contact the Appeals Section and request a priority conference (see “Expediting Your Appeal,” below).

**Recording your conference.** The Board does not ordinarily record appeals conferences. If you wish to record the conference, be sure to check the appropriate box on the *Response* form before returning it. If you do record the conference, whether electronically or by using a court reporter, you must be willing to provide a copy of the recording or transcript to the Appeals Section upon request.

***Expediting Your Appeal***

When you respond to the information request from the Petitions Section at the time your case is referred to the Appeals Section, or in the *Response to Notice of Conference* form, you may indicate whether you would be willing to take certain steps to speed up the appeals process. Your appeal can be expedited if you:

- Choose to attend an appeals conference in Sacramento. The conference will be scheduled within 60 days of receipt of your request.
- Agree to participate in a telephone conference. The Appeals Section will schedule the conference within 60 days of receipt of your request. The Board will pay for the call.
- Arrange to appear in the District Office at a future date on short notice.

***Conduct of the Conference***

The appeals conference is intended to be an informal review. Rules of evidence are not strictly followed. The purpose of the conference is to ensure that the Appeals Section and the Board know what remedy you seek and the grounds upon which it may be granted.

At the appeals conference, an Appeals Section representative — an attorney or auditor — will consider your arguments and any oral or written evidence you present. You should be sure to present all of the facts supporting your appeal so that the representative conducting the conference may fully consider the law and regulations as they apply to those facts. A representative of the Board’s audit staff will also be present to provide the staff position regarding why the tax or fee is due.

***Decision and Recommendation***

After the conference, the Appeals Section representative will prepare a *Decision and Recommendation* containing an analysis, conclusion, and recommendation for your case. It will be mailed to you along with a letter explaining your options for further action.

If both you and the Board staff agree with the *Decision and Recommendation*, the Board will issue a *Notice of Redetermination* or a *Notice of Refund*, and your appeal will end.

If you do not agree with the *Decision and Recommendation*, you may request a hearing before the Members of the Board. You must make your request within 30 days from the date of the Appeals Section’s letter transmitting the *Decision and Recommendation* to you. The Board department involved in your dispute may also request a hearing if it disagrees with the *Decision and Recommendation*.

## THE BOARD HEARING

The Board hearing is an oral or written presentation before the five Members of the Board of Equalization. Board hearings give you the opportunity to present your position on unresolved issues remaining after your appeals conference. You may represent yourself at the hearing, or you may be represented by an attorney, an accountant, or any other person you choose.

Board hearings are held monthly in Sacramento and frequently in the Los Angeles area. A number of hearings are scheduled for the same day.

In general, you will be given a hearing before the Members of the Board, provided you request one

- In your original petition for redetermination; or
- Within 30 days of the date of the letter transmitting the Appeals Section's *Decision and Recommendation*.

### Before the Hearing

#### *Avoiding a Delayed Decision*

The Board hearing is not designed to accommodate the presentation of new arguments or evidence not previously considered by the Appeals Section. Generally, if new evidence is presented at the hearing, the Board may order that the new evidence first be presented to the Appeals Section. Consequently, to avoid delaying a decision on your appeal, you should submit all relevant evidence and arguments to the Appeals Section before your hearing.

#### *Hearing Notification*

After receiving your hearing request, the Board Proceedings Division will send you and your representative an acknowledgment letter and related information, including the Board's regulations governing hearings (sections 5070 through 5087

of the *Rules of Practice*, see page 13). The letter will state the location set for your Board hearing.

Approximately 60 days prior to the hearing date, the Board Proceedings Division staff will send you a *Notice of Hearing* and a response form. You will be asked to submit the response form by a specified deadline — usually 15 days from the date of the notice. If you do not respond by the deadline, your case will be removed from the Board's agenda and submitted to the Members for decision based on the information in your case file.

#### *Requesting a Postponement*

As stated in your hearing notice, you may request that your Board hearing be postponed, provided you do so by the specified response deadline. However, please note that such postponements are granted for only the most compelling reasons. Board staff may grant one postponement, provided all parties agree and commit to a new hearing date. The staff will consider that date to be a firm commitment. Generally, additional postponements will not be granted.

#### *Contribution Disclosure Form*

State law (Government Code section 15626) prohibits a Board Member from participating in a Board proceeding if he or she has received a contribution of \$250 or more from a party to, or a participant in, a proceeding (or an agent of either), within the preceding twelve months. Board staff must inquire about and report on contributions made. To comply with this requirement, you will be sent disclosure forms with your hearing notice.

#### *Filing Briefs*

You have the option of filing briefs supporting your position. Board staff may also file briefs. If you choose to file an opening brief, you must do so at least 45 days prior to the hearing. Your brief must contain a

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*The Board hearing is not designed to accommodate the presentation of new arguments or evidence.*

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statement of the issue, a statement of facts, and a discussion of applicable legal points and authorities. If you file a reply brief in response to a brief filed by Board staff, you must submit it at least 30 days prior to the hearing date.

Generally, briefs cannot exceed thirty typed or handwritten, double-spaced, letter-size pages, printed on one side, in type no smaller than twelve characters per inch. Board Rule of Practice 5075 (sent with your hearing notice), describes the precise form and content requirements for briefs, and includes more specific information on filing deadlines.

If you wish to file a brief, please send it to the Chief of the Board Proceedings Division (see page 14 for address).

Closing or post-hearing briefs will be permitted only by order of the Board Members.

#### ***Staff Summary***

Prior to your hearing, the Appeals Section will prepare a summary of your case for the Board Members. You will be sent a copy about two weeks before the hearing. A copy is also sent to the Board department involved in your appeal.

#### ***Conduct of the Hearing***

At the hearing, the Chief of the Board Proceedings Division will call your name and will ask you, your representative (if you have one), and Board staff representatives to be seated in front of the Members. A representative from the Appeals Section will make brief introductory remarks. The Board Members will have a copy of the *Decision and Recommendation* you received after the appeals conference as well as the summary of your case. The party that requested the hearing will be asked to present oral arguments on unresolved issues, then the other party will be called upon to respond.

#### ***Hearings Are Informal***

Board hearings are brief, to the point, and informal. Legal or technical language is not required. You should give a clear, concise statement of your position. If facts are in dispute, you may bring witnesses to testify or use documents or other exhibits to help explain your position. As you plan your presentation, please keep in mind that you generally will be allowed 10 minutes to present your case.

#### ***Board Staff Will Advise the Members***

Board staff representatives will be present at the hearing to answer questions from the Board Members. The Members may ask you questions to clarify the issues in your case. At the direction of the Chair, the staff representatives may also ask you questions, and explain to the Board their opinions regarding your positions, the value of evidence, or any other pertinent matters.

If at the time of the hearing new issues are raised or old issues need clarification, you may request additional time to respond.

#### ***A Record Is Made of All Hearings***

All Board hearings are reported by a certified court reporter. However, this record will be transcribed only at your request, and the transcript will be prepared at your expense. (At the time this publication was written, the rate was \$2.55 for each double-spaced typewritten page, plus postage.) Transcript requests should be made in writing in advance of the hearing to the Chief of the Board Proceedings Division (see addresses page 14).

A request for a transcript made after the hearing will be honored only if the request is made within six months after the date of the Board's decision and if the same hearing reporter is available to make the transcription.

## The Board Decision

At the close of the hearing, the Board Members may make an immediate decision, postpone the decision until the end of the hearing day, or take the matter under submission for a later decision. If the case is taken under submission, the Board may refer the matter to the Appeals Section staff for further review and preparation of a final report. After the report is complete, the Board Members will make a final decision. The Appeals Section will send you an informal notice outlining the Board's action.

### Notice of Redetermination (or Refund)

After the Board has heard your case and made any adjustments it deems proper, you will be sent a *Notice of Redetermination* (or a *Notice of Refund*). The notice will be issued about 45 days after the decision is made.

The *Notice of Redetermination* will indicate whether the Board determined that you owe any tax, fees, penalty, and interest. It will become final 30 days after it is issued unless you file a timely petition for rehearing, in which case the *Notice* will become final (1) 30 days after the mailing of the official notice of Board action to deny the petition or (2) if the Board grants a rehearing, 30 days after the mailing of the official notice of the Board decision on the rehearing.

If you disagree with the Board's decision, you must still pay the amount of the determination. However, once you pay, you may proceed to the next step of the appeals process, filing a claim for refund.

If you do not pay the amount due by the time the *Notice* becomes final, you will be charged an additional 10 percent penalty.

## FILING A CLAIM FOR REFUND

If you believe you have overpaid taxes or fees as a result of an audit, or for any other reason, and you wish to receive a refund of the overpaid amount, you must file a claim for refund with the Board. If you make payments because you did not file a petition for redetermination in a timely manner (see "*Filing Deadline*," page 2), and you intend to protest an audit after the payments are made, you must file a separate claim for refund for each individual payment.

### Form of Claim for Refund

If you are filing a claim for refund for diesel fuel or cigarette taxes, you may be required to use a specific form (see page 8).

Otherwise, you may submit a letter requesting a refund, or you may file a *Claim for Refund or Credit* form (Board form BOE-101).

Your claim must be in writing and state all of the grounds or reasons you believe that you have overpaid taxes or fees.

Mail your signed claim to the appropriate address:

*Claims for sales and use taxes*  
Petitions Section, MIC:38  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0038

*Claims for taxes and fees administered under the Special Taxes Department*

See page 14 for the appropriate address.

If you have not already had an appeals conference regarding the amount in question (see page 3), you may request one when you file your claim for refund. Requests are granted at the agency's discretion.

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*If you believe you have overpaid taxes or fees, you may file a claim for refund.*

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*The Board will not take action on a claim for refund until you have paid the full amount due.*

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***You may be required to file a specific claim for refund form:***

***Diesel Fuel Tax Law.*** Diesel fuel users and ultimate vendors (vendors who make diesel fuel sales to farmers and exempt bus operators) must use forms prescribed by the Board. Contact the Board's Fuel Taxes Division for more information (see page 14).

***Cigarette and Tobacco Products Tax Law.*** Distributors of cigarette stamps under the Cigarette and Tobacco Products Tax Law must use forms prescribed by the Board. Contact the Board's Excise Taxes Division (see page 14).

**Filing Period Limitations**

The time limit for filing a claim for refund will vary depending on a number of factors. In general, a claim for refund must be filed within:

- Three years (four years for insurance tax) from the due date of the return on which you overpaid taxes or fees, or
- Six months from the date the determination for which you paid taxes or fees became final, or
- Six months from the date of your overpayment,

whichever deadline occurs *later*.

If you do not file your claim for refund within the specified time limit, you will have no further recourse to recover overpaid taxes or fees.

***Caution:*** This description of claim filing limitation periods is very general. Please use it only as a guideline and do not rely solely on it in filing a specific claim. For more specific information regarding filing time frames, please refer to the law governing the tax or fee for which you wish to file a claim for refund, or contact the Board unit responsible for your tax or fee account (see pages 14-15).

**Multiple payments and claims for one liability.** The Board will not take action on a claim for refund until you have paid the full tax or fee amount determined to be due. If you file a claim for refund of a partial payment, the Board will hold that claim until you have paid the entire liability. The Board's Refund Section will advise you that you must file additional "protective" claims for refund for any subsequent payments until the liability has been paid in full. Such protective claims must be filed within six months after the date of each subsequent payment. Otherwise, the claims for refund may fall outside the filing periods mandated by law.

**Board Action on Your Claim**

The Board will send you a letter acknowledging receipt of your claim for refund. You may be asked to submit additional information. Board staff will consider your claim, review any information you submit, and take one of the following actions:

- Approve your claim. You will be sent a refund warrant and a *Notice of Refund* (see below).
- Deny your claim and notify you by an advance letter that explains the reasons for the denial.

When the denial is final, the Refund Section will send you a *Notice of Denial of Claim for Refund*.

The Board may approve or deny all or part of your claim.

***If Your Refund Is Approved***

When a refund is \$50,000 or less, the Board normally issues a *Notice of Refund* and a warrant for the refund amount within four to eight weeks after the decision is made. Refunds of more than \$50,000 take longer to process. Staff must first determine whether you have an outstanding liability with the Board or any other state agency. If you do owe taxes or fees to the State, the



Board may be required to transfer enough of the refund amount to cover that liability. In addition, refunds of more than \$50,000 must be approved by the Board Members.

*Note:* If the Board has not acted on your claim within 6 months of the filing date, you may be able to initiate a lawsuit to recover the amount of the overpayment (see "Filing an Action in Court," next column). Please refer to the specific law that applies to the particular tax or fee in question, and consult with your legal counsel.

### Further Appeal Options

If you disagree with the Board staff's denial of your claim for refund, you may request an appeals conference with an Appeals Section attorney or auditor. However, you generally will *not* be allowed a conference when:

- You have not submitted the requested documentation supporting your claim for refund; or
- The Board has already denied a petition for redetermination in which you raised the same issues addressed in your claim for refund.

For more information on the appeals conference process, see page 3.

### You May Request a Board Hearing

If your dispute is not resolved by the appeals conference, you may request a hearing before the elected Board. Such hearings are not required by law, and are granted at the agency's discretion. A description of the Board hearing process begins on page 5.

Generally, if your request for an appeals conference was denied, your request for a Board hearing will also be denied. If you wish to continue your appeal, you must take your case to court, as explained below.

### Filing an Action in Court

If the Board denies your claim for refund, you may file a lawsuit to recover the amount

you believe you have overpaid. You must file the action within 90 days after the mailing of the Board's *Notice of Denial of Claim for Refund*. You may also file a lawsuit if the Board has failed to act on your claim within 6 months (see also *Note*, below). Normally, your lawsuit is limited to the grounds identified in your claim for refund. The filing location depends on the type of tax or fee involved. You should seek legal advice regarding whether to file a lawsuit and where it should be filed.

*Note:* If you are filing a lawsuit as a result of the Board's failure to act on your claim within 6 months, no filing deadline is specified by law. However, if you *do* receive a denial notice from the Board — even after the 6-month period has ended — the 90-day filing deadline applies.

### APPEALING A FINDING OF SUCCESSOR'S LIABILITY

If you purchase a business that owes sales and/or use tax, diesel fuel tax, motor vehicle fuel license tax, use fuel tax, or oil spill response prevention fees, the Board may find that you are personally liable for taxes, penalties, and interest owed by the business, up to the amount of the purchase price. This is called "successor's liability."

If the Board determines that you are liable for amounts owed by a business you purchase, you will be mailed a *Notice of Successor's Liability*. You may contest the determination by filing a petition for redetermination of the liability. Your petition should be filed in the same manner and within the same time limits described in "Appealing a Determination of Taxes or fees Due," beginning on page 2. The appeals conference and Board hearing described on pages 3 through 7 are available to any successor who wishes to contest a *Notice of Successor's Liability*.

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*If the Board denies your claim, you may file a lawsuit to recover the amount you believe you have overpaid.*

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*While your appeal is pending, you may be able to propose a settlement of your case.*

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### Statement of Account

If, after reviewing your case, the Board determines that the successor's liability applies, you will be sent a *Statement of Account*. The *Statement* becomes final in 30 days. No additional penalty applies if you do not pay the amount due within the 30-day time limit. However, you cannot take further steps to contest the liability until payment is made. After you have paid the amount due, you may file a claim for refund, as described in the section beginning on page 7.

## OTHER TYPES OF APPEALS

### Late Protests

The Board sometimes accepts "late protests"—petitions for redetermination filed after the 30-day filing deadline. If your petition is accepted as a late protest, it will be reviewed in the same manner as any other petition. Collection activities may not be delayed.

### Application for Hearing Based on a Jeopardy Determination

Under certain unusual circumstances, the Board may serve a taxpayer with a "jeopardy determination"—a notice that tax is immediately due and payable. If you receive such a notice, you must pay the amount due, or file a petition for redetermination and deposit with the Board a prescribed amount for security (as specified on your notice.) If you do not take one of these actions *within 10 days of service of the notice*, you will be subject to an additional late penalty and interest and the Board will start collection actions on your account.

In addition to filing a petition for redetermination, you also have the right to apply for an administrative hearing if you wish to

- Establish that the determination is excessive,
- Establish that the sale of property

that may be seized should be delayed pending the administrative hearing because the sale would result in irreparable injury,

- Request release of property, or
- Request stay of collection

*Note:* The administrative hearing will not consider whether the jeopardy determination was warranted.

You must file your application for a hearing within 30 days after the service of the *Notice of Jeopardy Determination*. Your request will be referred to the Appeals Section, and your case will follow the process described in "The Appeals Conference," beginning on page 3.

*Please note:* Filing an action for an administrative hearing will not keep the Board from pursuing collection action. Unless you pay the amount due or file a petition for redetermination and pay an amount for security (as noted above), the Board will continue to pursue collection of your tax or fee liability.

## PROPOSING A SETTLEMENT OF A DISPUTED TAX OR FEE LIABILITY

While you are pursuing an appeal, you may be able to propose a settlement of your case. The Board's settlement program is open to petitions for redetermination, late protests, and claims for refund.

*Important Reminder:* While your request for settlement is pending, you must continue to meet all applicable time deadlines for your petition or claim for refund.

The procedures described in this section apply to the settlement of sales and use tax liabilities. Settlement procedures for special taxes and fees are generally the same. However, please note that some special tax disputes, including certain Hazardous Substances Tax Law disputes, may be settled through other state agencies.

Also, please note that the settlement procedures outlined in the following sections currently do not apply to appeals or claims filed for the motor vehicle fuel license tax, or insurance tax.

### Settlement Proposal

To start the settlement process, you must first submit a written request describing your settlement proposal. You may send a letter or use form BOE-393, *Settlement Proposal for Sales and Use Tax Cases*, which is available from the Board's field offices, the Information Center, and our Internet home page (see pages 13-14).

Your settlement proposal must include:

- Your name, current address, and daytime telephone number
- If applicable, the name, address, fax and telephone number of your representative, as well as a copy of your representative's power of attorney
- Your taxpayer account number (for example, your seller's permit number)
- The type of tax involved (for example, "sales and use tax" or "diesel fuel tax")
- Your good faith settlement offer, including the factual and legal grounds in support of your offer

Send your offer to:

Settlement and Administration Section,  
MIC:87

State Board of Equalization  
450 N Street  
P.O. Box 942879  
Sacramento, CA 94279-0087

*Please note:* To be considered for settlement, your request must be submitted *at least 30 days before* the date first scheduled for a hearing of your case before the Board Members.

### Consideration of Settlement Proposal

Settlement staff will review your request

and advise you or your representative whether your case will be accepted into the settlement program. If staff determine that there is a genuine factual or legal dispute, your case will generally be accepted. However, settlement is discretionary. A case may be rejected for a variety of reasons. For example, if staff determines that you have not provided sufficient facts or that the Board's case has little litigation risk, your case will not likely be accepted.

If your case is accepted for consideration, your offer may or may not be accepted. If appropriate, staff may seek to negotiate an agreement to a different amount.

### Approval of Proposed Settlement

If you and the Board staff reach agreement on a settlement amount, you will be sent a confirmation letter and a Settlement Agreement (a legal document containing the settlement terms and conditions). After you sign, date, and return the Agreement, it will be forwarded through the Board's management to the Attorney General, who has 30 days to review and comment on the proposed settlement. The proposed settlement and the Attorney General's conclusions are then submitted to the Members of the Board for approval.

The Board has 45 days from the date of the Board meeting at which the settlement proposal is submitted to act on the proposal. If the Board fails to act within 45 days, the recommendation is considered to be approved.

If the proposed settlement requires payment by the taxpayer, generally the taxpayer will be required to pay the full settlement amount before the agreement is submitted to Board Members for approval.

*Note:* If you and Board staff cannot reach an agreement, you may appeal to the Board's Assistant Chief Counsel, Settlement and Administration Section. If no agreement is reached as a result of that appeal, or if you choose not to appeal the Board staff action,

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*If your settlement proposal is not approved, your appeal will continue through the normal appeals process.*

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*The usual appeals procedures do not apply if you file a petition for bankruptcy.*

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the settlement process ends and your appeal will continue through the normal appeals process.

### **Board Member Approval or Denial**

#### ***Proposal Is Denied***

If the Board Members deny the proposed settlement, they may send the matter back to Board staff for further negotiation. If you and the staff reach agreement, the case may be resubmitted following the steps described above. In the meantime, your appeal will continue through the normal appeals process.

#### ***Proposal Is Approved***

If the Board Members approve the proposed settlement, and the reduction of tax in the settlement exceeds \$500, certain information about the settlement will become a matter of public record, available for review at the office of the Board's Executive Director. The public record will include the following:

- The names of the taxpayers who are parties to the settlement
- The total amount in dispute
- The amount agreed to in the settlement
- A summary of the reasons why the settlement is in the best interests of the State
- The Attorney General's conclusion regarding the reasonableness of the settlement.

*Please Note:* Information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure will not be included in the public record if its disclosure would adversely affect you. With the exception of the required public record, settlements are considered confidential information.

All settlements entered into under this program are final. They cannot be appealed

unless one of the parties can show fraud or misrepresentation of a material fact.

For more information or to submit a written settlement proposal, contact the Board's Settlement and Administration Section (see page 14). You may also wish to obtain a copy of our informational notice, form BOE-393-N, *Sales and Use Tax Settlement Program*.

You can visit our website for more information: <http://www.boe.ca.gov/393n.htm>.

### **IF YOU FILE A PETITION FOR BANKRUPTCY**

After the filing of a petition for bankruptcy and while the automatic stay is in effect, the Board may continue to perform an audit or reaudit, make an assessment, and issue a *Notice of Determination and Demand for Payment*. However, the automatic stay prevents the Board from taking administrative action, such as collection action, filing a lien, or holding appeals conferences or Board hearings on taxpayer appeals.

While the automatic stay is in effect, the Board will:

- Accept a petition for redetermination or claim for refund filed in a timely manner (filed by the end of the filing period defined by state statute or within 60 days following your bankruptcy filing, whichever is later)
- Suspend all administrative proceedings on a previously submitted petition for redetermination while the automatic stay is in effect; and
- When appropriate, file a claim in the bankruptcy action based on the best information available.

*Please note:* Although the Board will suspend administrative action on your appeal pending the lifting of the automatic stay, the Board staff may continue investigating your case and recommend adjustments.

## FOR MORE INFORMATION

### Hearing Procedure Regulations

You may wish to obtain a copy of the Board's regulations on petitions and hearing procedures (*Rules of Practice*, from Title 18, Division 2, Chapter 10, California Code of Regulations, sections 5010-5095).

As previously mentioned, you will receive sections 5070 through 5087 of the *Rules of Practice* when your request for a hearing is acknowledged by the Board Proceedings Division (see page 5).

See below for information on how to order the *Rules of Practice*.

### Publications

To inform taxpayers about the law, the Board offers many free publications, some of which explain how the law and regulations apply to specific types of businesses. The Board also publishes copies of the law and regulations for each of the taxes and fees it administers.

A list of Board publications is found in publication 51, *Guide to Board of Equalization Services*.

To obtain Board forms and publications — or for answers to your general tax questions — call the Board's Information Center:

800-400-7115

*TDD service for the hearing impaired*

From TDD phones: 800-735-2929

From voice phones: 800-735-2922

Representatives are available to assist you Monday – Friday, 8-5 (Pacific time), except holidays. Fax-back and other automated services are available 24 hours a day.

### Internet

Address: <http://www.boe.ca.gov>

You can download forms and publications, verify seller's permit numbers, learn about Board hearings, read about law and regulation changes, and so forth.

### Tax Advice

If you have questions about the application of a specific rule or procedure to a tax or fee affecting you, please call or write the appropriate Board Department for specific information (see previous column).

For your protection it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction or activity if the Board determines that you reasonably relied on written advice from the Board regarding the transaction or activity. For this relief to apply, a request for advice must be in writing, identify the taxpayer or feepayer to whom the advice applies, and fully describe the facts and circumstances of the transaction or activity.

For written advice regarding sales and use taxes, send your letter to:

Program Planning Division, MIC:92

State Board of Equalization

PO Box 942879

Sacramento, CA 94279-0092

For written advice regarding special taxes, send your letter to the appropriate department (see page 14).



## FOR MORE INFORMATION

### Headquarters Offices that May Be Involved in Your Appeal

**Appeals Section, MIC: 85**  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0085  
916-324-2652 phone  
916-324-2618 fax

**Petitions Section, MIC: 38**  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0038  
916-445-2259 phone  
916-445-2249 fax

**Refund Section, MIC: 39**  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0039  
916-445-1315 phone  
916-445-2249 fax

**Board Proceedings Division, MIC: 81**  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0081  
916-322-9569 phone  
916-324-3984 fax

**Settlement and Administration  
Section, MIC: 87**  
State Board of Equalization  
P.O. Box 942879  
Sacramento, CA 94279-0087  
916-324-2836 phone  
916-322-3829 fax

All of the above offices are located at 450 N  
Street in Sacramento.

### Special Taxes Department Divisions and Programs

**Environmental Fees Division,  
MIC:57**  
**P.O. Box 942879**  
**Sacramento, CA 94279-057**  
**916-323-9555**

Hazardous Substances Tax  
Environmental Fee  
Activity Fee  
Generator Fee  
Disposal Fee  
Facility Fee and Tiered Permit Fees  
Occupational Lead Poisoning  
Prevention Fee

**Excise Taxes Division, MIC:56**  
**P.O. Box 942879**  
**Sacramento, CA 94279-0056**  
**1-800-400-7115**

Alcoholic Beverage Tax  
Cigarette and Tobacco Product Tax  
Emergency Telephone Users Surcharge  
Energy Resources Surcharge  
Insurance Tax  
Integrated Waste Management Fee  
Tire Recycling Fee

**Fuel Taxes Division, MIC:30**  
**P.O. Box 942879**  
**Sacramento, CA 94279-0030**  
**916-322-9669**

Motor Vehicle Fuel License Tax  
Diesel Fuel Tax\*  
Use Fuel Tax\*  
Underground Storage Tank  
Maintenance Fee  
Childhood Lead Poisoning  
Prevention Fee  
Oil Spill Response, Prevention, and  
Administration Fees

*\* You may be paying these taxes under the  
International Fuel Tax Agreement (IFTA).*

## FOR MORE INFORMATION

### Property Tax Appeals Information \*

Property Taxes Department, MIC: 63  
 State Board of Equalization  
 P.O. Box 942879  
 Sacramento, CA 94279-0063  
 916-445-4982 phone  
 916-323-8765 fax

\* For state-assessed properties, private railroad car tax, timber yield tax. For information on appealing your local property tax, contact your County Assessor.

### Taxpayers' Rights Advocate's Office

The State Board of Equalization wants to make dealing with us as easy as possible. Consequently, we have appointed a Taxpayers' Rights Advocate to help you with problems you cannot resolve at other levels.

Taxpayers' Rights Advocate Office,  
 MIC:70  
 State Board of Equalization  
 P.O. Box 942879  
 Sacramento, CA 94279-0070  
 916-324-2798 phone  
 888-324-2798 toll-free phone  
 916-323-3319 fax

### Board Field Offices

CITY	AREA CODE	NUMBER
Bakersfield	661	395-2880
City of Industry	562	908-5280
Culver City	310	342-1000
El Centro	760	352-3431
Eureka	707	445-6500
Fresno	559	248-4219
Laguna Hills	949	461-5711
Norwalk	562	466-1694
Oakland	510	622-4100
Rancho Mirage	760	346-8096
Redding	530	224-4729
Riverside	909	680-6400
Sacramento	916	227-6700
Salinas	831	443-3003
San Diego	619	525-4526
San Francisco	415	703-5400
San Jose	408	277-1231
San Marcos	760	744-1330
Santa Ana	714	558-4059
Santa Rosa	707	576-2100
Stockton	209	948-7720
Suisun City	707	428-2041
Torrance	310	516-4300
Van Nuys	818	904-2300
Ventura	805	677-2700

### Offices for Out-of-State Accounts

Chicago, IL	312	201-5300
Houston, TX	281	531-3450
New York, NY	212	697-4680
Sacramento, CA	916	227-6600

*Note: The statements in this publication are general and are current as of the date on the cover. The law is complex and subject to change. If there is a conflict between this publication and the law, the latter is controlling.*

**Basic Steps  
Sales and Use  
Taxes and  
Special Taxes  
Appeals**

## FILING A PETITION FOR REDETERMINATION OF AMOUNTS OWED

<i>Step (some steps may be repeated; some are optional)</i>	<i>See page</i>
Taxpayer files petition for redetermination of taxes or fees, or pays amount due and files claim for refund (see below)	2
Jeopardy determination: taxpayer also files for administrative hearing (optional)	10
Appeals conference held (optional)	3
Board hearing held (optional)	5
Board makes decision and issues <i>Notice of Determination</i> or <i>Notice of Refund</i>	7
If taxpayer disagrees, they pay amount due and file claim for refund	7

## FILING A CLAIM FOR REFUND OF AMOUNTS PAID

<i>Step (some steps may be repeated; some are optional, some are discretionary))</i>	<i>See page</i>
Taxpayer files claim for refund of taxes or fees paid	7
Board reviews claim and issues <i>Notice of Refund</i> and warrant, or	8
Board issues letter denying claim	8
Appeals conference held (optional; held at Board's discretion)	9
Board hearing held (optional; held at Board's discretion)	9
If taxpayer disagrees, they file court action for refund	9

## APPEALING A FINDING OF SUCCESSOR'S LIABILITY

<i>Step (some steps may be repeated; some are optional)</i>	<i>See page</i>
Business's purchaser ("successor") files petition for redetermination	9
Board makes decision; issues <i>Statement of Account</i> if liability upheld	10
If successor disagrees, they pay amount due and file claim for refund	10

## PROPOSING A SETTLEMENT OF A TAX OR FEE LIABILITY

<i>Step (some steps may be repeated)</i>	<i>See page</i>
Taxpayer submits written settlement proposal	11
Board staff reviews proposal	11
If proposal denied, taxpayer may appeal to Assistant Chief Counsel, Settlement and Administration Section (denied cases continue through the normal appeals process)	11
If initial/negotiated proposal accepted, taxpayer signs Settlement Agreement	11
Agreement sent to Attorney General for review and comment	11
Board approves or denies settlement	12